IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/09/2003

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THE HONOURABLE MR. JUSTICE P.K.MISRA

WRIT PETITION No.2416 of 1999

R.K.Rahuram Mohan ... Petitioner

-Vs-

1.State of Tamil Nadu, rep. By
its Secretary to Government,
School Education Department,
Fort St. George, Chennai-9.

2.Chief Educational Officer,
Virudhunagar, Virudhunagar District.

3.District Educational Officer,
Virudhunagar, Virudhunagar District.

4.The Secretary,
P.M.Marimuthu Nadar Higher
Secondary School,
Virudhunagar District. ... Respondents

Petition under Article 226 of The Constitution of India to
issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.V.Ramajagadeesan

For respondents: Mrs. Thenmozhi Sivaperumal,
Additional Government Pleader
for RR.1 to 3

:O R D E R

Heard the learned counsels appearing for the parties.

2. This petition has been filed to issue a Writ of
Certiorarified Mandamus to call for the records pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.3384/A1/96 dated 07.11.1997, quash the same and direct the respondents to approve the appointment of the petitioner and confer all the consequential benefits.

3. The petitioner, who is having B.Ed., qualification and whose name has been registered in the Employment Exchange, was appointed as Secondary Grade Assistant in June, 1995. But the appointment was not approved. Hence, the petitioner had filed W.P.No.1421 of 1996. At that stage, the only ground for non approval was to the effect that the petitioner was having higher qualification than required and therefore, his appointment as Secondary Grade Assistant cannot be approved. Relying upon G.O.Ms.No.203 dated 19.03.1996 and an earlier decision of this Court in W.P.No.11336 of 1995 dated 12.08.1996, while quashing the order of the third respondent, this Court had directed the respondents to consider the request of approval as a Secondary Grade Teacher in the light of the Government Order in G.O.Ms.No.203 Education, Science and Technology Department dated 19.03.1996 within a stipulated period. Therefore, the present impugned order has been passed.

4. In the impugned order, the authorities have refused to approve the appointment mainly on the ground that the petitioner had been appointed as a Secondary Grade Assistant without obtaining a list from the Employment Exchange, which was against the Rules. It has to be noticed that no such objection had been raised during the earlier point of litigation and at that stage, the only ground for disapproval is to the effect that the qualification of the petitioner was higher than the required qualification. Since the question as to whether his name had been sponsored by the Employment Exchange had not been raised in the earlier litigation, the respondents would not be permitted to raise such a question at the subsequent stage.

5. This decision is now clear in the form of the decision of the Supreme Court in the case of Kishore K.Pati v. Distt. Inspector of Schools ((2000) 9 Supreme Court Cases 405). Moreover, it appears that even though the name had not been sponsored by the Employment Exchange, the name of the petitioner was in fact registered in the Employment Exchange and hence, it is unfair to raise such objection when the earlier appointment had been made about 10 years back i.e. in the year 1 993.

6. For the aforesaid purpose, the decision reported in the case of Roshni Devi v. State of Haryana ((1998) 8 Supreme Court Cases 59) appears to be apposite.

7. The learned counsel appearing for the petitioner has also relied upon an un reported decision of this Court, in W.P.No.1321 of 2000, wherein in relation to the teachers of the very same School, a similar question had been raised and such contention had been negatived and directions had been issued by order dated 17th September, 2003.

8. Having regard to all the aspects, the writ petition is allowed and the respondents are directed to take necessary steps for according approval within a period of two months from the date of communication of that order. No costs.

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To

1.The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.

2.Chief Educational Officer,
Virudhunagar, Virudhunagar District.

3.District Educational Officer,
Virudhunagar, Virudhunagar District